

ASSEMBLY BILL

No. 1709

Introduced by Assembly Member Gallagher
(Coauthors: Assembly Members Kim, Lackey, and Mathis)
(Coauthors: Senators Anderson and Nielsen)

January 25, 2016

An act to amend Section 754 of the Evidence Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

AB 1709, as introduced, Gallagher. Courts: interpreters: deaf or hard of hearing.

Existing law, in any civil or criminal action where a party or witness is an individual who is deaf or hearing impaired and that individual is present and participating, requires the proceedings to be interpreted in a language that the individual who is deaf or hearing impaired understands by a qualified interpreter appointed by the court or other appointing authority, or as agreed upon. Existing law defines a qualified interpreter as an interpreter who has been certified as competent to interpret court proceedings by a testing organization, agency, or educational institution approved by the Judicial Council as qualified to administer tests for court interpreters for individuals who are deaf or hearing impaired. Existing law requires each superior court to maintain a current roster of qualified interpreters.

This bill would replace the term “hearing impaired” with the term “hard of hearing,” and would replace the term “qualified interpreter” with the term “court-certified interpreter.” The bill would define a court-certified interpreter as an interpreter who has been certified as competent to interpret court proceedings by an organization approved pursuant to the California Rules of Court and who is listed on the

Judicial Council’s list of recommended court interpreters. The bill would authorize a court, for good cause, to appoint an interpreter who is not court-certified and would require the court to follow certain procedures and guidelines when making the appointment. The bill would delete the requirement that each superior court maintain a current roster of qualified interpreters.

Existing law requires a good faith effort to secure the services of an interpreter to be made whenever a peace officer or other person having a law enforcement or prosecutorial function in certain investigations and proceedings questions or otherwise interviews an alleged victim or witness who demonstrates or alleges deafness or hearing impairment. Existing law requires the payment of the interpreter’s fee incurred during the questioning or interview to be a charge against the county, or other political subdivision of the state, in which the action is pending.

This bill would instead require payment of the interpreter’s fee to be a charge against the employer of the investigating peace officer or other person questioning or otherwise interviewing the alleged victim or witness, as described above.

Existing law prohibits a written or oral statement made by an individual who the court finds is deaf or hearing impaired in reply to question of a peace officer or other person having a law enforcement or prosecutorial function in certain investigations and proceedings from being used against that individual unless the question was accurately interpreted and the statement was made knowingly, voluntarily, and intelligently and was accurately interpreted, or the court finds the individual could not have used an interpreter or an interpreter was not otherwise required by a specified federal law, and the statement was made knowingly, voluntarily, and intelligently.

This bill would prohibit a court from considering a statement attributed to a person who is deaf or hard of hearing unless the statement was accurately interpreted, or the individual could not have used an interpreter or an interpreter was not otherwise required by a specified federal law.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 754 of the Evidence Code is amended to
2 read:

754. (a) As used in this section, “individual who is deaf or ~~hearing-impaired~~ *hard of hearing*” means an individual with a hearing loss so great as to prevent his or her understanding language spoken in a normal tone, but does not include an individual who is ~~hearing-impaired~~ *hard of hearing* provided with, and able to fully participate in the proceedings through the use of, an assistive listening system or computer-aided transcription equipment provided pursuant to Section 54.8 of the Civil Code.

(b) In any civil or criminal action, ~~including, but not limited to, any including an action involving a traffic or other infraction, any a small claims court proceeding, any a juvenile court proceeding, any a family court proceeding or service, or any a proceeding to~~ determine the mental competency of a person, in any court-ordered or court-provided alternative dispute resolution, including mediation and arbitration, or ~~any a~~ administrative hearing, where a ~~party or witness~~ party, witness, or juror is an individual who is deaf or ~~hearing-impaired~~ *hard of hearing* and the individual who is deaf or ~~hearing-impaired~~ *hard of hearing* is present and participating, the proceedings shall be interpreted in a language that the individual who is deaf or ~~hearing-impaired~~ *hard of hearing* understands by a ~~qualified~~ court-certified interpreter appointed by the court or other appointing authority, or as agreed upon.

(c) For purposes of this section, “appointing authority” means a court, department, board, commission, agency, licensing or legislative body, or other body for proceedings requiring a ~~qualified~~ court-certified interpreter.

(d) For ~~the~~ purposes of this section, “interpreter” ~~includes, but is not limited to,~~ includes an oral interpreter, a sign language interpreter, or a deaf-blind interpreter, depending upon the needs of the individual who is deaf or ~~hearing-impaired~~ *hard of hearing*.

(e) For purposes of this section, “intermediary interpreter” means an individual who is deaf or ~~hearing-impaired~~ *hard of hearing*, or a hearing individual who is able to assist in providing an accurate interpretation between spoken English and sign language or between variants of sign language or between American Sign Language and other foreign languages by acting as an intermediary between the individual who is deaf or ~~hearing-impaired~~ *hard of hearing* and the ~~qualified~~ court-certified interpreter.

(f) For purposes of this section, ~~“qualified”~~ “court-certified interpreter” means an interpreter who has been certified as

1 competent to interpret court proceedings by ~~a testing organization,~~
2 ~~agency, or educational institution approved by the Judicial Council~~
3 ~~as qualified to administer tests to court interpreters for individuals~~
4 ~~who are deaf or hearing impaired.~~ *an organization approved*
5 *pursuant to the California Rules of Court and who is listed on the*
6 *Judicial Council's list of recommended court interpreters.*

7 (g) ~~In the event that~~ If the appointed interpreter is not familiar
8 with the use of particular signs by the individual who is deaf or
9 ~~hearing impaired~~ *hard of hearing* or his or her particular variant
10 of sign language, the court or other appointing authority shall, in
11 consultation with the individual who is deaf or ~~hearing impaired~~
12 *hard of hearing* or his or her representative, appoint an
13 intermediary interpreter.

14 (h) ~~Prior to July 1, 1992, the Judicial Council shall conduct a~~
15 ~~study to establish the guidelines pursuant to which it shall~~
16 ~~determine which testing organizations, agencies, or educational~~
17 ~~institutions will be approved to administer tests for certification~~
18 ~~of court interpreters for individuals who are deaf or hearing~~
19 ~~impaired. It is the intent of the Legislature that the study obtain~~
20 ~~the widest possible input from the public, including, but not limited~~
21 ~~to, educational institutions, the judiciary, linguists, members of~~
22 ~~the State Bar, court interpreters, members of professional~~
23 ~~interpreting organizations, and members of the deaf and~~
24 ~~hearing-impaired communities. After obtaining public comment~~
25 ~~and completing its study, the Judicial Council shall publish these~~
26 ~~guidelines. By January 1, 1997, the Judicial Council shall approve~~
27 ~~one or more entities to administer testing for court interpreters for~~
28 ~~individuals who are deaf or hearing impaired. Testing entities may~~
29 ~~include educational institutions, testing organizations, joint powers~~
30 ~~agencies, or public agencies.~~

31 Commencing July 1, 1997, court interpreters for individuals who
32 are deaf or hearing impaired shall meet the qualifications specified
33 in subdivision (f).

34 (h) *For good cause, a court may appoint an interpreter who is*
35 *not court-certified. When appointing an interpreter who is not*
36 *court-certified, the court shall follow the good cause and*
37 *qualification procedures and guidelines for uncertified or*
38 *unregistered spoken language interpreters set forth in Section*
39 *68561 of the Government Code and those adopted by the Judicial*
40 *Council.*

1 (i) Persons appointed to serve as interpreters under this section
2 shall be paid, in addition to actual travel costs, the prevailing rate
3 paid to persons employed by the court to provide other interpreter
4 services unless such service is considered to be a part of the
5 person's regular duties as an employee of the state, county, or other
6 political subdivision of the state. Except as provided in subdivision
7 (j), payment of the interpreter's fee shall be a charge against the
8 court. Payment of the interpreter's fee in administrative
9 proceedings shall be a charge against the appointing board or
10 authority.

11 (j) Whenever a peace officer or any other person having a law
12 enforcement or prosecutorial function in any criminal or
13 quasi-criminal investigation or non-court proceeding questions or
14 otherwise interviews an alleged victim or witness who demonstrates
15 or alleges deafness or hearing impairment, ~~loss~~, a good faith effort
16 to secure the services of ~~an a court-certified~~ interpreter shall be
17 ~~made, made~~ without any unnecessary ~~delay~~ delay, unless either
18 the individual who is deaf or ~~hearing-impaired~~ *hard of hearing*
19 affirmatively indicates that he or she does not need or cannot use
20 an interpreter, or an interpreter is not otherwise required by Title
21 II of the *federal* Americans with Disabilities Act of 1990 (Public
22 Law 101-336) and federal regulations adopted thereunder. Payment
23 of the interpreter's fee shall be a charge against the ~~county, or other~~
24 ~~political subdivision of the state, in which the action is pending.~~
25 *employer of the investigating peace officer or other person*
26 *questioning or otherwise interviewing the alleged victim or witness.*

27 (k) ~~No (1)~~ A statement, written or oral, made by an individual
28 who the court finds is deaf or ~~hearing-impaired~~ *hard of hearing* in
29 reply to a question of a peace officer, or any other person having
30 a law enforcement or prosecutorial function in any criminal or
31 quasi-criminal investigation or proceeding, ~~may~~ *shall not* be used
32 against that individual who is deaf or ~~hearing-impaired~~ *hard of*
33 *hearing* unless the question was accurately interpreted and the
34 statement was made knowingly, voluntarily, and intelligently and
35 was accurately interpreted, or the court ~~makes special findings~~
36 *finds* that either the individual could not have used an interpreter
37 or an interpreter was not otherwise required by Title II of the
38 *federal* Americans with Disabilities Act of 1990 (Public Law
39 101-336) and federal regulations adopted thereunder and that the
40 statement was made knowingly, voluntarily, and intelligently.

1 (2) *A statement attributed to a person who is deaf or hard of*
2 *hearing shall not be considered by the court unless the statement*
3 *was accurately interpreted, or either the individual could not have*
4 *used an interpreter or an interpreter was not otherwise required*
5 *by Title II of the federal American with Disabilities Act of 1990*
6 *(Public Law 101-336) and federal regulations adopted thereunder.*
7 *A statement interpreted by a court-certified interpreter or an*
8 *interpreter appointed pursuant to subdivision (h) is presumed to*
9 *be accurately interpreted.*

10 (l) In obtaining services of an interpreter for purposes of
11 subdivision (j) or *paragraph (1) of subdivision (k)*, priority shall
12 be given to first obtaining a ~~qualified~~ *court-certified* interpreter.

13 (m) Nothing in subdivision (j) or *paragraph (1) of subdivision*
14 *(k)* shall be deemed to supersede the requirement of subdivision
15 (b) for use of a ~~qualified~~ *court-certified* interpreter for ~~individuals~~
16 *an individual who are is deaf or hearing-impaired hard of hearing*
17 *participating as parties or witnesses a party or witness in a trial or*
18 *hearing.*

19 (n) In any action or proceeding in which an individual who is
20 deaf or ~~hearing-impaired~~ *hard of hearing* is a participant, the
21 appointing authority shall not commence proceedings until the
22 appointed interpreter is in full view of and spatially situated to
23 assure proper communication with the participating individual
24 who is deaf or ~~hearing-impaired~~ *hard of hearing.*

25 ~~(o) Each superior court shall maintain a current roster of~~
26 ~~qualified interpreters certified pursuant to subdivision (f).~~